United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 15-2**
	)	**Issued: February 27, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 1, 2014 appellant, through her attorney, filed a timely appeal from a June 9, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that her claim should be expanded to include additional consequential conditions arising out of a February 2, 2005 employment injury.

[1] The record also contains a September 24, 2014 decision rescinding authorization to change attending physicians. Appellant has not appealed this decision and thus it is not before the Board at this time. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 15, 2005 appellant, then a 50-year-old bulk mail technician, filed a traumatic injury claim alleging that, on February 2, 2005, she twisted her left knee when she stood up to move away from a stool. OWCP accepted the claim for a sprain/strain of the lateral collateral ligament of the left knee.[3] On November 8, 2005 appellant underwent a partial medial and lateral menisectomy and chondroplasty of the left knee.

By decision dated June 19, 2006, OWCP terminated appellant's wage-loss compensation effective that date.[4] It found that she had no further disability due to her February 2, 2005 employment injury.

On January 28, 2011 OWCP expanded acceptance of appellant's claim to include a left lateral collateral ligament tear, a tear of the left medial meniscus and an aggravation of left knee osteoarthritis. On February 8, 2011 it authorized a left total knee arthroplasty, which was performed on May 3, 2011. OWCP paid appellant compensation for total disability beginning April 26, 2011. On June 22, 2011 it expanded acceptance of her claim to include chronic pain syndrome.

In a decision dated February 9, 2012, OWCP terminated appellant's compensation effective February 12, 2012 after finding that she had no further disability due to her February 2, 2005 work injury.[5]

In a report dated October 12, 2012, Dr. Daniel R. Orcutt, a Board-certified orthopedic surgeon, discussed appellant's history of a total knee replacement after a work injury. He evaluated her for pain in her lumbar spine and left hip "due to a fall caused by weakness in her [l]eft knee" and pain in the fifth metatarsal. Dr. Orcutt diagnosed joint pain and a closed fracture of the tarsal and metatarsal bones. In a visit status report form dated October 12, 2012, he found that appellant was unable to work.[6]

On October 18, 2012 OWCP expanded acceptance of appellant's claim to include trochanteric bursitis of the left hip and an aggravation of lumbar sprain.[7] On October 24, 2012

[3] In decisions dated October 28, 2005 and January 13, 2006, OWCP denied appellant's claim for a left ankle fracture due to her February 2, 2005 injury. On June 9, 2006 it denied her request to change attending physicians. In a decision dated June 29, 2006, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the left leg.

[4] By decision dated January 19, 2007, OWCP denied appellant's claim for compensation from May 6 to 10, 2005. On April 25, 2007 it denied her request for reconsideration of its June 29, 2006 decision as insufficient to warrant reopening the case for further merit review under 5 U.S.C. § 8128.

[5] By decision dated March 19, 2012, OWCP granted appellant a schedule award for an additional 15 percent permanent impairment of the left leg, for a total 25 percent impairment. The period of the award ran from February 12 to December 12, 2012.

[6] In a progress report dated October 31, 2012, Dr. Orcutt diagnosed an improving closed fracture of the tarsal and metatarsal.

[7] OWCP accepted these injures as a consequence of appellant's October 2012 fall.

appellant advised OWCP that she fell on October 10, 2012 because her left knee buckled. On November 26, 2012 she requested disability compensation benefits from OWCP instead of retirement benefits from the Office of Personnel Management.

In a progress report dated November 28, 2012, Dr. Orcutt discussed appellant's complaints of tenderness in the left lateral femoral condyle and lateral collateral ligament and fifth metatarsal of the foot. He diagnosed a fracture of the metatarsal and pain in the joint of the lower leg.

On December 11, 2012 OWCP accepted that appellant sustained a closed fracture of the left metatarsal as a consequence of her February 2, 2005 employment injury.

In a report dated December 19, 2012, Dr. G. Kevin Perdue, an osteopath and Board-certified orthopedic surgeon, evaluated appellant for low back pain that began in 2005 after a fall at work. On examination he found tenderness at L5 on the right and left and tenderness of both hips. Dr. Perdue diagnosed lumbar spinal stenosis without claudication, degeneration of the lumbar intervertebral discs, nonallopathic sacral lesions, and a disturbance of skin sensation.

On January 4, 2013 appellant filed a claim for compensation beginning July 27, 2012. The employing establishment noted that she had retired on disability.

A magnetic resonance imaging (MRI) scan study of the lumbar spine, performed on January 8, 2013, revealed facet joint arthropathy at L5-S1 bilaterally, a disc bulge at L4-5, and degenerative end plate edema at T11.

On January 16, 2013 Dr. Perdue discussed appellant's complaints of muscle pain, muscle weakness, joint pain, and back pain. He diagnosed nonallopathic lesions of the sacral region, lumbar spinal stenosis without neurogenic claudication, degeneration of the lumbar intervertebral disc, disturbance of skin sensation, and other musculoskeletal symptoms. Dr. Perdue submitted progress reports containing findings on examination and discussing his treatment of appellant from February through March 2013.

By letter dated March 7, 2013, OWCP advised appellant that it had not accepted the conditions for which she was currently undergoing treatment, specifically nonallopathic lesions of the sacral region, spinal stenosis of the lumbar region without neurogenic claudication, and degeneration of a lumbar or thoracic intervertebral disc. It requested that she explain why she believed that she sustained a back condition as a consequence of her knee condition. OWCP further requested that she submit a reasoned medical report addressing whether her back condition was causally related to her knee injury.

In a report dated March 21, 2013, Dr. Orcutt related that he began treating appellant in July 2012 for swelling, instability, and pain in the left knee due to a February 2, 2005 work injury. In May 2011 appellant had a total knee replacement. Dr. Orcutt stated, "In Oct[ober] 2012 [appellant] fell due to weakness in her left knee. This fall caused her to aggravate preexisting arthritis in her back. [Appellant] fell again due to weakness in [her] knee causing injury to her 5th metatarsal." He related that her metatarsal fracture had healed but that she had pain in her lumbar spine and left hip due to her 2012 fall. In a visit status report, Dr. Orcutt

found that appellant was unable to work. He noted that her knee was unstable and recommended additional physical therapy.

On March 21, 2013 Dr. Perdue stated, "It is reported that in Oct[ober] 2012 [appellant] fell due to weakness in her left knee. This fall caused her to aggravate preexisting arthritis in her back." He noted that she had recently undergone sacroiliac joint injections and indicated that he was treating her for her accepted conditions. Dr. Perdue advised that appellant was unable to work due to back pain.

In a work capacity evaluation dated March 27, 2013, Dr. Orcutt found that appellant was unable to work due to left knee instability. In a work capacity evaluation dated March 28, 2013, Dr. Perdue opined that she could not work due to back pain.

By decision dated April 9, 2013, OWCP denied appellant's request to expand acceptance of her claim to include any additional consequential injuries to her lumbar spine. It thus found that she was not entitled to compensation for disability.

Electrodiagnostic studies performed January 9, 2013, received by OWCP on April 15, 2013, revealed evidence of L5-S1 radiculopathy.

On May 5, 2013 appellant requested reconsideration. By decision dated May 8, 2013, OWCP denied her request for reconsideration after finding that she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128.

In a letter dated July 17, 2013, appellant related that she aggravated her low back and hip when she fell and broke her left foot. She further indicated that she sustained an injury to her upper back, shoulders, neck, and head as a consequence of her October 2012 fall. On August 6, 2013 appellant again requested reconsideration.[8] On September 8, 2013 she requested that OWCP expand her claim to include injuries to her shoulders, head, neck and upper lumbar spine as a consequence of her fall. In a September 18, 2013 response, OWCP advised appellant that it had denied all additional consequential injuries in its April 9, 2013 decision and to follow her appeal rights.

In a report dated September 24, 2013, a physician assistant related that appellant injured her neck and back due to a fall that occurred when her left leg gave out. She noted that appellant indicated that she had an occupational injury to her knee in 2005.

On April 7, 2014 appellant, through her attorney, requested reconsideration of the April 9, 2013 decision. In support of her request, she submitted a January 21, 2014 report from Dr. Lee A. Kelley, a Board-certified orthopedic surgeon, who related that he was treating her for "neck pain which she relates to an injury of October 10, 2012." Dr. Kelley diagnosed cervical strain and a cervical disc protrusion. He stated, "According to [appellant's] history, she was

[8] The record contains progress reports and disability certificates from Dr. Perdue and Dr. Orcutt dated April through August 2013.

stepping out of a tow truck and fell backward and hit her head and sustained injury to her neck. Based on [her] history, her neck injury is work related…."

In a report dated April 2, 2014, Dr. Kenneth J. Lazarus, a Board-certified neurologist, discussed appellant's February 2, 2005 injury when she twisted her knee and right foot. He noted that in June 2011 her left knee buckled and she fell, hitting her head. In August 2011 appellant's left knee again buckled and she fell, injuring her left hip and her back. In October 2012 she struck her head on a truck platform when her left knee buckled and she fell. A physician diagnosed a fractured metatarsal. Dr. Lazarus stated, "Throughout this period of time, as a result of the falls and the gait abnormalities which were caused by her various orthopedic injuries, [she] has progressive low back pain radiating to both hips and legs, worse on the left side. To this point, the back injury has not been accepted as a compensable related injury." He noted that an evaluation of appellant's headaches and problems with memory revealed an intracranial aneurysm. Appellant also experienced urinary incontinence due to her head and back injuries. Dr. Lazarus reviewed the medical records and listed findings on examination. He diagnosed probable fibromyalgia predating the 2005 work injury, a left medial meniscus tear and exacerbation of left knee osteoarthritis, postconcussive headaches, status post intracranial aneurysm repair, postconcussive syndrome, lumbar degenerative disc disease exacerbated by "postural stresses imposed by [her] left knee injury of 2005, multiple traumas due to gait instability, and adjustment disorder with anxiety and depression. Dr. Lazarus stated:

> "This case is very complicated. [Appellant] appears to have had a preexisting chronic pain condition somewhat consistent with fibromyalgia syndrome. She had a significant on-the-job injury likely causing a medial meniscus tear and likely increasing her significant, widespread pain problems. It is clear that the on-the-job injury, its subsequent treatment, and the falls and various injuries associated with her knee instability have caused an overall exacerbation of her chronic pain issues including her back pain. It is likely they have contributed to increased structural degeneration of the lumbar spine."

Dr. Lazarus related that it was "difficult to sort out the contributions of any single, specific, traumatic event to the development or progression of chronic pain in a patient with fibromyalgia syndrome."

By decision dated April 18, 2014, OWCP denied appellant's request for reconsideration after finding that it was untimely filed and did not establish clear evidence of error. On May 27, 2014 appellant's attorney asserted that he timely requested reconsideration on April 7, 2014.[9] By letter dated June 6, 2014, OWCP advised that it had issued the April 18, 2014 decision in error and would vacate the decision.

By decision dated June 9, 2014, OWCP denied modification of its April 9, 2013 decision.

[9] Appellant appealed to the Board but subsequently requested that the Board dismiss her appeal. *Order Dismissing Appeal*, Docket No. 14-1366 (issued July 24, 2014).

LEGAL PRECEDENT

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.[10]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[11]

ANALYSIS

OWCP accepted that appellant sustained a sprain of the lateral collateral ligament of the left knee, a left medial meniscus tear, an aggravation of osteoarthritis of the left lower leg, chronic pain syndrome, trochanteric bursitis of the left hip, and an aggravation of lumbar sprain causally related to a February 2, 2005 work injury. It further accepted that she sustained a closed fracture of the left metatarsal due to a consequential injury on October 10, 2012.

Appellant alleged that she also aggravated her upper back, neck, shoulders, and head when she fell on October 10, 2012. She requested disability compensation from OWCP in lieu of retirement benefits. As discussed, appellant has the burden of proof to establish a claim for a consequential injury by submitting reasoned medical evidence.[12]

On October 12, 2012 Dr. Orcutt noted that appellant underwent a total knee replacement as the result of a work injury. He found that she sustained lumbar spine, left hip, and metatarsal pain after she fell due to weakness in her left knee. Dr. Orcutt diagnosed joint pain and a closed fracture of the tarsal and metatarsal bones. He determined that appellant was disabled from employment. In a progress report dated November 28, 2012, Dr. Orcutt diagnosed a fracture of the metatarsal and pain in the joint of the lower leg. While he noted that appellant sustained pain in her left hip and lumbar spine, he did not directly relate any diagnosed conditions of the spine or hip to her fall, and thus his opinion is insufficient to meet her burden of proof. Regarding disability, Dr. Orcutt indicated that appellant was disabled from work due to her metatarsal

[10] *See S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

[11] *Charles W. Downey*, 54 ECAB 421 (2003).

[12] *William C. Thomas*, 45 ECAB 591 (1994).

fracture. He did not, however, evidence any knowledge of her work duties in finding her disabled.[13] Additionally, appellant has not filed a specific claim for compensation for disability as a result of her accepted metatarsal fracture.

On March 21, 2013 Dr. Orcutt indicated that he treated appellant starting in July 2012 for left knee pain, instability, and swelling as the result of a February 2, 2005 employment injury. He related that in October 2012 she fell as a result of left knee weakness and aggravated preexisting back arthritis. Appellant fell again and hurt her fifth metatarsal. Dr. Orcutt opined that appellant's metatarsal fractured had healed but that she continued to experience pain in her left hip and lumbar spine as a result of her 2012 fall. He did not, however, provide any rationale for his conclusion that she aggravated preexisting back arthritis. In a March 27, 2013 form report, Dr. Orcutt found that appellant was unable to work due to left knee instability. He did not, however, provide rationale for his opinion. Consequently, Dr. Orcutt's reports are of diminished probative value as they do not contain sufficient medical rationale to demonstrate that the conclusion reached was sound, logical, and rationale.[14]

In a report dated December 19, 2012, Dr. Perdue, an osteopath, evaluated appellant for low back pain that he indicated started after a 2005 fall at work. He diagnosed lumbar spinal stenosis without claudication, degeneration of the lumbar intervertebral discs, nonallopathic sacral lesions, and a disturbance of skin sensation. On January 16, 2013 Dr. Perdue diagnosed nonallopathic lesions of the sacral region, lumbar spinal stenosis without neurogenic claudication, degeneration of the lumbar intervertebral disc, disturbance of skin sensation, and other musculoskeletal symptoms. He submitted progress reports containing findings on examination and discussing his treatment of appellant from February through March 2013. In his reports, Dr. Perdue did not address causation other than to note that she experienced low back pain after a 2005 employment injury. As he did not address the relevant issue of whether appellant's claim should be expanded to include additional conditions due to her October 2012 consequential injury, his report is of diminished probative value.

On March 21, 2013 Dr. Perdue indicated that appellant related that she fell in October 2012 as the result of weakness in her left knee. He opined that the fall aggravated preexisting back arthritis. On March 28, 2013 Dr. Perdue advised that appellant was disabled due to back pain. He did not, however, provide any rationale for his opinion. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.[15]

In a report dated January 21, 2014, Dr. Kelley diagnosed cervical strain and a cervical disc protrusion. He related that he was treating appellant for neck pain which she attributed to an October 10, 2012 injury. Dr. Kelley stated, "According to [appellant's] history, she was stepping

[13] *Roger Dingess*, 47 ECAB 123 (1995) (to establish causal relationship, a physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale).

[14] *K.W.*, 59 ECAB 271 (2007).

[15] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

out of a tow truck and fell backward and hit her head and sustained injury to her neck. Based on [her] history, her neck injury is work related…." While Dr. Kelley indicated that appellant related a history of hitting her head and injuring her neck due to a work injury, he did not provide an independent opinion linking a diagnosed neck condition to the October 2012 fall. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[16]

On April 2, 2014 Dr. Lazarus reviewed appellant's history of a 2005 employment injury to her left knee and subsequent falls in June and August 2011 and October 2012. He indicated that at the time of her fall in October 2012 she struck her head. Dr. Lazarus diagnosed probable fibromyalgia syndrome preexisting her employment injury in 2005. He further found that appellant had degenerative disc disease of the lumbar spine aggravated by postural stresses from her 2005 knee injury and trauma caused by gait instability. Dr. Lazarus advised that appellant's knee injury and subsequent falls worsened her chronic pain and also "likely contributed to increased structural degeneration of the lumbar spine." He related that it was "difficult to sort out the contributions of any single specific traumatic event to the development or progression of chronic pain in patient with fibromyalgia syndrome." Dr. Lazarus' finding, however, that her knee injury and falls "likely" caused a lumbar degenerative condition is speculative in nature and thus of diminished probative value.[17] He further did not provide any rationale for his finding that appellant sustained an exacerbation of her pain syndrome due to falls arising from her knee injury.

As discussed, appellant has the burden to establish a claim for a consequential injury through the submission of rationalized medical opinion evidence. She has not submitted evidence from a physician who, based on an accurate factual history, found that she had additional conditions as a consequence of her February 2, 2005 work injury and supports his or her opinion with medical reasoning. Consequently, appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that her claim should be expanded to include additional consequential conditions arising out of a February 2, 2005 employment injury.

[16] *Earl David Seale*, 49 ECAB 152 (1997).

[17] *D.D.*, 57 ECAB 710 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board